

MINUTES

MONTANA SENATE 59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN MIKE WHEAT**, on January 31, 2005 at 10:00 A.M., in Room 303 Capitol.

ROLL CALL

Members Present:

Sen. Mike Wheat, Chairman (D)
Sen. Brent R. Cromley (D)
Sen. Aubyn Curtiss (R)
Sen. Jon Ellingson (D)
Sen. Jesse Laslovich (D)
Sen. Jeff Mangan (D)
Sen. Dan McGee (R)
Sen. Lynda Moss (D)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)
Sen. Gary L. Perry (R)

Members Excused: Sen. Jim Shockley (R)

Members Absent: None.

Staff Present: Valencia Lane, Legislative Branch
Mari Prewett, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: SB 283, SB 2, 1/26/2005
Executive Action: None.

HEARING ON SB 283**Opening Statement by Sponsor:**

SEN. CAROL WILLIAMS, SD 46, MISSOULA, opened the hearing on **SB 283**, Revise partner and family member assault. **SEN. WILLIAMS** stated that this change to the Partner and Family Member Assault Act would make the act of strangulation, in the course of partner and family member assault, a felony. She then provided the Committee with information and statistics she had from the U.S. Department of Justice. **SEN. WILLIAMS** went on to say that SB 283 would remove the gender distinction in the Act. She further stated that this change to the law would give law enforcement more tools to refer victims to domestic violence services. She continued saying that some of protections provided under this statute would include access to restraining orders, and to civil domestic violence attorneys. **SEN. WILLIAMS** indicated that with this change to the Act, offenders could receive appropriate penalties and counseling and possibly reduce the risk of repeat offenders.

Proponents' Testimony:

Catrina Dalrymple, Missoula, talked to the Committee with regard to her personal experience of being strangled by her first husband and the related injuries. She explained to the Committee that she truly felt that she was going to die and had it not been for an automobile accident in front of her home she very well may have. She indicated that even after ten years she still suffered from post traumatic problems. She concluded by urging the Committee to adopt SB 283.

Brian Fisher, Detective, Helena Police Department, provided the Committee with information regarding his background in law enforcement. He then talked about statistical information from the past three years regarding the increase in domestic violence reports in the Helena community. He went on to say that most of the incidents of domestic violence involved alcohol, drugs or the use of a weapon and many were fatal. **Det. Fisher** explained that when they responded to a call if there were signs of injury or reasonable apprehension of bodily injury the law enforcement officer would be required to make an arrest. He then talked about information they usually received when they did respond to a domestic violence incident. **Det. Fisher** talked about the problems involved with trying to determine whether or not strangulation was a part of the assault if they are not given direct information. He further talked about the serious injuries that could result from strangulation and the fact that many times the symptoms did not show themselves for several days. He

concluded saying that they had been making strides in helping the victims, however, they need to make further strides because these victims have always been alone and unable to help themselves.

SEN. ELLINGSON arrived at the Hearing on SB 283.

Elaine Spino, Speech Pathologist, St. Peter's Hospital, talked to the Committee about a patient she had seen that had developed a swallowing disorder as a result of having been strangled. She went on to say that the disorder had not been caused by anything physical, it had been brought about by post traumatic stress. She then talked about physical problems that could be caused by strangulation. **Ms. Spino** concluded by urging the Committee to seriously consider legal consequences for perpetrators of strangulation that would be commensurate with the devastating physical and mental impairments suffered by their victims.

Kate Cholewa, Montana Coalition Against Domestic and Sexual Violence, spoke in support of SB 283. **Ms. Cholewa's** written testimony is attached as Exhibit 1.

EXHIBIT(jus24a01)

Dawn Hayden, Citizen of Helena, talked about her own personal experience of being stalked, battered and strangled by an exboyfriend and the resulting post traumatic stress she had suffered as a result of that incident. **Ms. Hayden** urged a do pass on SB 283.

Donetta Klein, Executive Director of the Montana Coalition Against Domestic and Sexual Violence, talked about the training that her organization does with regard to training on all of the systems that interface with the issues of domestic and sexual violence. She went on to say that they provide training at the Law Enforcement Academy on strangulation. **Ms. Klein** read testimony from **Doug Colombik, a detective with the Miles City Police Department**. **Det. Colombik's** written testimony is attached as Exhibit 2. **Ms. Klein** also provided the Committee with the written testimony of **Kristy Evans, Voices of Hope**. **Ms. Evans'** written testimony is attached as Exhibit 3.

EXHIBIT(jus24a02)

EXHIBIT(jus24a03)

{Tape: 1; Side: A; Approx. Time Counter: 0 - 27.2}

Opponents' Testimony:

Rachel Roberts, Montana Family Foundation, stated that although the Montana Family Foundation firmly opposes partner and family member assault, they also feel the bill is the epitome of a designer crime. She went on to say that if someone were to strangle someone, at the least, it should be classified as an aggravated assault, punishable by up to 20 years and a \$50,000 fine. She continued stating that SB 283 was a bill designed to give legal status to homosexuals and that homosexuals were already covered under current law and was unnecessary. She concluded by urging the Committee to vote no on SB 283.

Harris Himes, Montana Family Coalition, talked about the language stricken from the bill and stated that he felt SB 283 was part of the homosexual agenda. He asked the Committee to vote against the bill.

Jill DeClancy, Montana Eagle Forum, stated that, for the reasons already stated, they oppose SB 283.

Jacque Trude, representing herself, stated that she was standing in opposition to SB 283.

Informational Testimony: None.

Questions from Committee Members and Responses:

SEN. MANGAN asked **Ms. DeClancy** if she would agree, that in regard to the Partner Family Member Assault (PFMA) laws, homosexuals were not covered under current law. **Ms. DeClancy** replied that she believed they were covered under the current law.

SEN. MANGAN asked **Ms. DeClancy** if, regardless of whether she felt it was right or wrong, if two people were living together, both females, and one person injured the other, that under current law they could not be charged by PFMA. He went on to ask if they were not currently excluding people under current law. **Ms. DeClancy** responded that since she did not understand how the current law read it was possible. She went on to say that it was her understanding that if one female were to strangle another, they would be charged the same as a male strangling a female.

SEN. MANGAN replied that they were not under this particular statute.

SEN. CROMLEY asked **SEN. WILLIAMS** if she had statistics from other states than Montana regarding the use of strangulation in a domestic relationship and how it affects the crime. **SEN.**

WILLIAMS responded that she did not. **SEN. WILLIAMS** deferred to

Ms. Cholewa for an answer. **Ms. Cholewa** stated that she did not have the exact numbers that would include same sex partners. She went on to say that there was a City Attorney that had offered an amendment that would define strangulation. She continued saying that the City Attorney has used Oregon and Oklahoma statutes on strangulation with a PFMA as models.

SEN. O'NEIL asked **SEN. WILLIAMS** why she had not included pointing a gun at a partner or pulling a knife on them rather than just strangulation as felonies. **SEN. WILLIAMS** replied the reason was because they were already included as felonies.

SEN. O'NEIL asked **SEN. WILLIAMS** if they were included under this Act. **SEN. WILLIAMS** replied, "Yes."

SEN. MCGEE asked **Ms. Cholewa** if she remembered when the Act had been changed from domestic violence to partner family member assault. **Ms. Cholewa** replied that she had not been working on that legislation at the time, however, she did remember when it was happening.

SEN. MCGEE asked **Ms. Cholewa** if she recalled why the name was changed. **Ms. Cholewa** responded that she did not.

SEN. O'NEIL asked **SEN. WILLIAMS** why the bill made assault with a weapon a misdemeanor and strangulation a felony. He further asked if strangulation was worse than pulling a gun on a partner. **SEN. WILLIAMS** replied that in her opinion it was not.

CHAIRMAN WHEAT asked **SEN. WILLIAMS** if she would object to changing the language on Page 2, Lines 9-11 as follows: strike "an offender convicted of family member assault" and insert "a person who by strangling, knowingly cause bodily injury to another shall be fined...." He went on to suggest putting the language under aggravated assault rather than partner and family member assault, and asked if that would accomplish the same thing. **SEN. WILLIAMS** replied that they had discussed that and she felt it would accomplish the same thing. She went on to say that she would not object to such an amendment.

Closing by Sponsor:

SEN. WILLIAMS stated the she would hope that they would take into consideration that violence against anyone in Montana should be abhorrent and abusers who strangle their partners usually are not first time offenders. She went on to say that there were long-term, psychological and physical consequences and outcomes from the act of strangulation. **SEN. WILLIAMS** informed the Committee that there was a proposed amendment that would define

strangulation. She concluded saying that she hoped they would give SB 283 a do pass recommendation.

{Tape: 1; Side: B; Approx. Time Counter: 0 - 12.5}

HEARING ON SB 2

Opening Statement by Sponsor:

SEN. RICK LAIBLE, SD 44, VICTOR, opened the hearing on **SB 2**, Recognizing authority to display national motto & historical documents. **SEN. LAIBLE** advised that he had brought SB 2 forward as a result of a lawsuit that had been filed because a Boy Scout had made plaques displaying the national motto, "In God We Trust", and had placed the plaques in all of the schools in his School District. **SEN. LAIBLE** then talked about all of the places the motto could be found. He went on to say that all SB 2 was saying was that if a public agency wanted to display the national motto, they could do so without having to worry about being sued. He further stated that the bill also included other historical documents that had references to God in them. He continued saying that he was trying to protect schools from unnecessary litigation. **SEN. LAIBLE** added that SB 2 was a simple bill and asked for a do pass.

Proponents' Testimony:

Larry Chambers, Clancy, spoke about the heritage and history of the motto, "In God We Trust." **Mr. Chambers** showed the Committee the plaque that had brought about the lawsuit. He continued talking about the groups that were against the display of any document that contained a reference to God. He further stated that there were 22 states with legislation promoting the national motto. He asked why Montana should not be the 23rd state to adopt such legislation. He concluded by asking the Committee to support SB 2.

{Tape: 1; Side: B; Approx. Time Counter: 12.5 - 25.3}

Jacque Trude, representing herself, spoke about the Washington Monument's inscription, when translated, means, "Praise Be to God." She then read a portion of Washington's prayer for America. **Ms. Trude** concluded her testimony by asking for a do pass recommendation for SB 2.

Lana Chambers, Clancy, stated that she supported SB 2.

Sierra Chambers, Clancy, expressed support for SB 2.

Mckenzie Chambers, Clancy, stated that she supported SB 2.

Rachel Roberts, representing the **Montana Family Foundation**, spoke in support of SB 2. **Ms. Roberts'** written testimony is attached as Exhibit 4.

EXHIBIT(jus24a04)

Jill DeClancy, Montana Eagle Forum, stated that Eagle Forum stood in support of SB 2. She read into the record information written by Edith Schaufly, the founder of Eagle Forum, regarding the Civil Rights Attorney's Fees Award Act. After reading from the article, **Ms. DeClancy** stated that the ACLU was using this law for First Amendment cases asserting the civil right not to see a cross, or the ten commandments. She went on to talk about the ways in which the ACLU was attempting to use the law to advance their beliefs and pursue lawsuits against any person or entity displaying any type of plaque or monument depicting anything that could be depicted as having a religious connotation. **Ms.**

DeClancy talked about the problems that had been created for the Boy Scouts because they had refused to accept homosexual scout masters and because the scouts use an oath with a reference to God. **Ms. DeClancy** stated that Eagle Forum believes that this issue is about two things, money and taking God out of our country.

Harris Himes, Montana Family Coalition, talked about the Stevensville matter and the fact that the young man involved was Spencer Erickson, Dallas Erickson's son. He explained that he and **Dallas Erickson** would like to propose a friendly amendment saying that this be required and not simply encouraged. He further added that had an actual lawsuit developed the Alliance Defense Fund wrote a letter to the Stevensville School Board saying they would be happy to defend them at no cost. **Mr. Himes** went on to say that they were not talking about a generic God, they were talking about the God of the Bible.

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

SEN. CROMLEY referred **SEN. LAIBLE** to Page 2, Line 4, Subpart 3 and asked if the word censured meant to criticize. **SEN. LAIBLE** responded it was.

SEN. CROMLEY asked **SEN. LAIBLE** asked if the bill was encouraging creeping federalism and eroding State rights. **SEN. LAIBLE** replied that it was not. He went on to say if they looked at Page 2 the bill talks about writings, speeches, documents and proclamations of founders and presidents of the United States, acts of the United States Congress... He further stated that he would consider it a friendly amendment to include any state reference documents in the bill.

SEN. PERRY asked **SEN. LAIBLE** what state agencies and units of local governments have constitutional rights. **SEN. LAIBLE** responded that we, as citizens of this state, have constitutional rights. He went on to say that within the Constitution we define those three elements of our governmental system. He further stated that he believed that each of the three branches were entities unto themselves. He then referred to definitions of state agencies and local governments already in statute. **SEN. LAIBLE** asked whether or not the Governor's Office should have the right to hang the State Constitution in that office, and stated he felt that was the question.

SEN. PERRY asked **SEN. LAIBLE** to point specifically to a constitutional right of an agency or a local government. **SEN. LAIBLE** stated within the Constitution the Legislature has the right to give to agencies the ability to do or not do certain things. He went on to say that was the reason the bill was before them. He added what he was doing was asking permission to honor what is on our money. He further stated that he was asking the Legislature to put into statute the right of agencies to place on display the national motto, the State Constitution, the Constitution of the United States, and any other historical documents they would like to display.

SEN. PERRY asked **SEN. LAIBLE** if he was asking the Legislature to say that any agency could do this. **SEN. LAIBLE** responded that the bill was simply saying that agencies would be encouraged to display the national motto or items of historical significance.

SEN. PERRY further asked **SEN. LAIBLE** if a more proper word would be "may" display the national motto, etc. **SEN. LAIBLE** responded that he believed that the word could just as easily be "may" as "encouraged."

SEN. MCGEE asked **SEN. LAIBLE** if he would agree to rewording the bill so that the constitutional rights would refer back to the people and not to local governments or state agencies. **SEN. LAIBLE** answered that he would agree and would appreciate any rewording that would make the document clearer.

SEN. ELLINGSON asked **Mr. Himes** if, when he said, the God of the Bible, he was referring only to the Christian God. **Mr. Himes** responded the history of the bill was in reference to the Christian God.

SEN. ELLINGSON further asked **Mr. Himes** if the God they were referencing would not be the God the Jews worship. **Mr. Himes** answered that the God of the Bible was the God the Jews worship.

SEN. ELLINGSON then asked **Mr. Himes** if they were also encompassing the God worshiped by Muslims. **Mr. Himes** replied, "No." He went on to say that it was his opinion and not that of others that would have a different opinion.

SEN. ELLINGSON asked **Mr. Himes** if this would encompass the God worshiped by members of the Church of Latter Day Saints. **Mr. Himes** stated in his opinion it would.

SEN. ELLINGSON asked **SEN. LAIBLE** to respond to the same questions he had asked of **Mr. Himes**. **SEN. LAIBLE** responded that the bill had not been brought forward in regard to any religious reference. He went on to say that the bill was addressing the right to display historical documents that have a religious reference in them.

SEN. ELLINGSON then asked **SEN. LAIBLE** if the God referenced in the national motto was the Creator or God worshiped by all of the various religions. **SEN. LAIBLE** responded that he believed Creator might be more appropriate. He went on to say that rather than using the word "creator" it was better to use religious connotation. He further stated that the bill should not take away from the fact that in this country everyone was free to believe in any God or creator they wanted and they should not be trying to take anything away from those beliefs.

{Tape: 2; Side: A; Approx. Time Counter: 0 - 29.8}

SEN. MANGAN asked **SEN. LAIBLE** to explain to him what he expected to happen with the bill. **SEN. LAIBLE** stated that he expects if they pass the bill and say that they can within the local and state governments post historical documents that they will not be sued. He went on to say in the event they were sued, there would at least be something in statute that would protect them.

SEN. MANGAN asked **SEN. LAIBLE** how the bill would protect them. **SEN. LAIBLE** replied that he was trying to put into statute that the Legislature, as a body, supported state and local governments being able to display historical documents with a lessor chance of being sued.

SEN. MANGAN asked **SEN. LAIBLE** if a public building was anywhere the public might go or was it state, county or city buildings.

SEN. LAIBLE replied when he stated public buildings he was referring to public schools, public office buildings, the Capitol, etc. He went on to say that SB 2 was never intended for private property, even if there was public access. He further stated public buildings as used in SB 2 were public buildings that were owned or leased by public entities.

Closing by Sponsor:

SEN. LAIBLE thanked the Committee for a good debate. He went on to say the most compelling testimony on the bill came from the two young ladies that had stood in support of SB 2. He continued asking the Committee to not read more into the bill than what was intended. He concluded by saying that he was asking the Legislature to encourage local governments to display historical documents without the fear of anyone trying to advance any particular Christian motive.

{Tape: 2; Side: B; Approx. Time Counter: 0 - 6.5}

ADJOURNMENT

Adjournment: 11:42 A.M.

SEN. MIKE WHEAT, Chairman

MARI PREWETT, Secretary

MW/mp

Additional Exhibits:

EXHIBIT ([jus24aad0.PDF](#))